

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 98-F-17

Date Issued: June 8, 1998

Requested by: Cynthia M. Feland, Grant County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a county may collect funds pursuant to a tax levy under N.D.C.C. §§ 57-15-28.1(6) and 52-09-08(3) to make cash payments to its employees for the stated purpose of the employees' purchasing individual health insurance policies.

II.

Whether a cash payment in lieu of providing a group health insurance program, paid to county commissioners who are currently receiving the maximum statutory salary under N.D.C.C. § 11-10-10(5), results in the county commissioners receiving a salary in excess of that maximum.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that a county may not collect funds pursuant to a tax levy under N.D.C.C. §§ 57-15-28.1(6) and 52-09-08(3) to make cash payments to its employees for the stated purpose of the employees' purchasing individual health insurance policies.

II.

It is my opinion that if the county commissioners received both the maximum statutory salary permitted by N.D.C.C. § 11-10-10(5) and cash they may use to purchase health insurance, the county commissioners received salaries above the statutory maximum, and are obligated to return to the county any amounts they received that exceeded the statutory maximum.

- ANALYSES -

I.

Two North Dakota statutes address a county's authority to levy a tax to fund a comprehensive health care insurance employee benefit program. N.D.C.C. § 52-09-08(3) states, in part, that, "[w]ithin the levy limitations set out in subsection 6 of section 57-15-28.1, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing body." N.D.C.C. § 57-15-28.1(6) further states "[a] county levying a tax for comprehensive health care insurance employee benefit programs in accordance with section 52-09-08 may levy a tax not exceeding four mills." Thus, a county is authorized to levy a tax, up to four mills, to fund a comprehensive health care insurance employee benefit program.

Neither of the statutes define what is meant by the term "comprehensive health care insurance employee benefit program." Because the term "program" could mean a plan under which the county provides either health insurance or cash with which the employee may purchase the employee's own health insurance, the statutes are ambiguous. See Northern X-ray Co., Inc. v. State ex rel. Hanson, 542 N.W.2d 733, 735 (N.D. 1996) (statutes are ambiguous if they are susceptible to differing but rational meanings). Since the statutes are ambiguous, extrinsic aids may be utilized to interpret them. N.D.C.C. § 1-02-39.

N.D.C.C. § 1-02-39 lists a number of extrinsic aids which may be used in construing an ambiguous statute, including the statute's legislative history and the consequences of a particular construction of the statute. "[T]he cardinal rule of statutory interpretation is that the interpretation must be consistent with legislative intent and done in a manner which will accomplish the policy goals and objectives of the statutes." O'Fallon v. Pollard, 427 N.W.2d 809, 811 (N.D. 1988).

The "comprehensive health care insurance employee benefit program" language was added to N.D.C.C. § 52-09-08 in 1987 by passage of House Bill 1426. 1987 N.D. Sess. Laws ch. 604. The legislative history of House Bill 1426 contains repeated references to the actual provision of health insurance itself, rather than merely paying county employees to purchase their own health insurance. See Hearing on H. 1426 Before the Senate Political Subdivisions Comm. 50th N.D. Leg. (March 6, 1987) (Testimony of Mark Johnson, North Dakota Association

of Counties); Hearing on H. 1426 Before the House Political Subdivisions Comm. 50th N.D. Leg. (February 6, 1987) (Testimony of Mark Johnson, North Dakota Association of Counties). As such, the legislative history supports an interpretation of the statute that the counties can only levy a tax to fund the actual provision of health insurance itself, and does not support a construction permitting the counties to levy a tax to pay the county employees to purchase their own insurance.¹

The analysis of the consequences of a particular construction of a statute is another tool one can use to interpret an ambiguous statute. N.D.C.C. § 1-02-39(5). In this case, the consequences of construing the statutes to mean the county could levy a tax to pay the county employees to purchase their own health insurance also supports the conclusion that such an interpretation is incorrect. If the county commissioners had the authority to make such a levy, by necessity they would also have to have the authority to expend the funds necessary to pay the county employees to purchase their own health insurance, rather than providing health insurance itself. However, N.D.C.C. § 11-11-14(16) states the county commissioners only have the authority to "expend county funds to finance in part or entirely for county employees a group insurance program for hospital benefits [and] medical benefits" The question then becomes whether giving county employees money with which they may (but not must) purchase their own health insurance is the same as providing a group health insurance program.

Words in a statute are to be given their plain, ordinary, and commonly understood meanings unless specifically defined in the Century Code. N.D.C.C. § 1-02-02; Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). "Group insurance program" is not specifically defined in the Code. However, N.D.C.C. § 26.1-18.1-01(10) defines the term "group contract" to mean "a contract for health care services which by its terms limits eligibility to members of a specified group." In the absence of an apparent contrary intent, the definition of that term applies to other sections of the Code. Adams County Record v. GNDA, 529 N.W.2d 830, 834 (N.D. 1995) (citing N.D.C.C. § 1-01-09).

¹ In this instance, the cash payments are in lieu of county-provided health insurance. The county does not require proof that the payments are actually used to purchase health insurance and are treated like wages for payroll tax purposes. See Letter from Cynthia M. Feland to Heidi Heitkamp (March 10, 1998).

Other authorities give similar definitions for the concept of group insurance coverage. Barron's Dictionary of Insurance Terms defines "group insurance" as a "single policy under which individuals in a natural group (such as employees of a business firm) and their dependents are covered." Barron's Dictionary of Insurance Terms 199 (3rd ed. 1995) (parentheses in original). Black's Law Dictionary similarly defines "group policy" as a

contract of insurance whereby persons, usually employees of a business enterprise, are insured in consideration of a determined payment per period, so long as the person remains in employment and the premiums are paid. The employer holds a master policy from the insurer, and each employee participant holds a certificate as evidence of coverage.

Black's Law Dictionary, 704 (6th ed. 1990).

Accordingly, the plain meaning of the term "group insurance program" is a program by which the county obtains an insurance policy under which the county employees and their dependents may be covered. The county's mere provision of money to its employees so that they may purchase their own individual policies is not a "group insurance program."

County commissioners only have the authority to provide a group insurance program; they do not have the authority to provide money to county employees for them to purchase their own individual policies. A construction of N.D.C.C. §§ 57-15-28.1(6) and 52-09-08(3) that would allow the county to levy a tax the funds from which the county would pay county employees to purchase their own health insurance would give the county commissioners the authority to collect funds which they do not have the authority to expend. One must presume the Legislature did not intend such an absurd result. See N.D.C.C. § 1-02-38.

After reviewing the legislative history and reasonably construing the statutes involved, I must conclude that a county may only use funds collected by a tax pursuant to N.D.C.C. §§ 57-15-28.1(6) and 52-09-08(3) to offer a comprehensive group health insurance policy to its employees. Accordingly, it is my opinion that a county may not collect funds pursuant to a tax levy under N.D.C.C. §§ 57-15-28.1(6) and 52-09-08(3) to make cash payments to its employees ostensibly for their use in purchasing individual health insurance policies.

N.D.C.C. § 11-10-10(5) lists the maximum salary a county commissioner may receive. N.D.C.C. § 11-10-10(4) states that a county commissioner may receive group hospital and medical benefits in addition to the salary provided pursuant to subsection five. Group hospital and medical benefits are not considered as salary for purposes of determining whether a county commissioner has exceeded the statutory maximum found in N.D.C.C. § 11-10-10(5). Letter from Attorney General Heidi Heitkamp to Earle R. Myers, Jr. (July 7, 1993).

However, as discussed above, the plain meaning of the term "group insurance program" is a program by which the county obtains an insurance policy under which the county employees and their dependents may be covered. The county's mere provision of money to its employees so that they may purchase their own individual policies is not a "group insurance program." As such, the county's provision of money to its county commissioners is not the same as giving them hospital and medical group insurance benefits. In fact, the county treated the payments as wages, withholding from such payments to commissioners amounts for federal social security deductions.²

Since there are no other exceptions which would allow such a cash payment to a county commissioner without the payment counting against that commissioner's salary, a payment to a county commissioner for the commissioner's purchase of individual health insurance does count as salary for purposes of determining whether the commissioner's salary has exceeded the maximum salary set by N.D.C.C. § 11-10-10(5). Thus, if a county commissioner is receiving both the maximum salary permitted by N.D.C.C. § 11-10-10(5) and cash for the commissioner's purchase of health insurance, the commissioner is receiving a salary in excess of the statutorily permitted maximum.

The logical and lawful result of a county commissioner receiving a salary in excess of the statutorily permitted maximum is that the commissioner is obligated to return any amount over the statutory maximum to the county. One of the general duties of the board of county commissioners is to oversee the fiscal affairs of the county. N.D.C.C. § 11-11-11(1).

One who wrongfully detains a thing or who gains a thing by accident, mistake, or other wrongful act is an implied trustee for the benefit of the person who would otherwise have it. N.D.C.C. § 59-01-06. As implied trustees over the fiscal affairs of the county, the

² See Letter from Cynthia M. Feland to Scott Miller (May 13, 1998).

individual county commissioners would owe a fiduciary duty to the county. See N.D.C.C. § 59-01-09. By paying themselves an amount exceeding the statutory maximum salary and keeping such funds, the county commissioners would violate that fiduciary duty. As a result, the county commissioners must return to the county any amount they received as salary in excess of the statutory maximum. See N.D.C.C. § 59-01-18. Accordingly, it is my opinion that if the county commissioners received both the maximum statutory salary and cash available to use to purchase health insurance, the county commissioners received salaries above the statutory maximum, and are obligated to return to the county any amounts they received that exceeded the statutory maximum.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Scott A. Miller
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